Farmer’s Guide to Anti-Corporate Farming Laws

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## State-Specific Flowcharts

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Prohibitions on Farmland Ownership and Leasing

Several Midwestern states limit the ability of corporations and LLCs to control farms and farmland. The statutes laying out these rules are commonly referred to as “anti-corporate farming” laws. Although they vary, these laws generally prohibit limited liability companies and corporations from owning or leasing farmland. Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota and Wisconsin all have anti-corporate farming laws on the books.

Despite the breadth of these laws, many farm business entities will not be directly affected. Farm LLCs and corporations usually do not actually own farmland, so prohibitions on farmland ownership are not a problem. Instead, an individual shareholder or member maintains title to farmland itself; ownership is not transferred to the entity. Farmers often do this for liability insulation. Because the farm businesses' assets are still available to satisfy farm business liabilities, maintaining the land in private, individual ownership protects it from business liabilities. In these cases, the individual shareholder or member leases the farmland to the business entity.

Where state law also prohibits LLCs and corporations from leasing farmland, of course, farmers might still run into problems. In these cases, farmers often rely on exceptions for small and family owned farm businesses. Every state with an anti-corporate farming law allows entities with just a few related shareholders or members to own or lease farmland.

Innovative and less traditional farm business entities may face potential complications with anti-corporate farming laws. The affordability of farmland is a barrier for many beginning farmers. To deal with this problem, communities are creating innovative opportunities for groups of people to contribute money to an emerging farm business operation in exchange for a later return on their investment. In other areas, farmers are organizing LLCs, corporations, and cooperatives to collectively purchase and manage farmland as a group. Both of these examples can lead to inadvertent violations of anti-corporate farming laws, as this chapter will illustrate.

Why Do these Laws Exist?

Most anti-corporate farming laws were passed between the 1930s and the 1970s with a goal of protecting and preserving smaller family-based farms as the ideal
ownership structure. Tightly-knit farm operations are perceived as more closely connected to the land and thus more inclined to faithfully guard farmland resources. When these laws were passed, the vast majority of farms were organized as sole proprietorships or general partnerships. Farm corporations were rare and limited liability companies did not exist in many states when these laws were passed. Corporations were viewed suspiciously, as distant, anonymous, and not responsible to the communities in which they operate, and still are viewed that way by many. The road hasn’t been a smooth one for anti-corporate farming laws. Constitutional challenges and modification by legislatures have weakened or eliminated state laws or individual provisions. Even farm advocates feel these laws have not fulfilled their original objective and are just a trap for the unwary. Some rural communities feel these laws limit solutions to the complex but endemic problem of the loss of small, family farms from the countryside. Regardless of their practical effect, these laws are still a relevant consideration for beginning farm businesses in the Midwest.

Look Before You Leap

Anti-corporate farming laws are still the rule in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin. Farmers in these states who are considering forming a corporation or LLC should consult our flowcharts, first. But before we get there, please keep these important notes in mind.

These flowcharts:

- Are designed to help farmers identify if they have issues for further exploration.
- Do not provide definitive answers about how anti-corporate farming laws affect a specific operation.
- Do not thoroughly explain each state’s laws.
- Do not explore all possible exceptions or explain all obligations for any enterprise.

This chapter and the accompanying flowcharts are designed to be read in connection with our “Farmers Guide To Business Entities” as a whole. Unlike previous chapters, this chapter does not go into detail about what a shareholder or member is or what the phrase “percentage interest” means, to highlight just two examples. Farmers should read this guide as a whole before delving into this
section. Anti-corporate farming laws are always subject to legislative change and evolving interpretations by the courts. Remember, these flowcharts are only designed to assist farmers in identifying whether they may be eligible for an exemption from ownership or leasing of farmland. All farmers will need to seek more information from an attorney to fully understand their obligations.

Next Steps
Farmers in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin should check the flowcharts on the following pages if they are considering forming an LLC or a corporation.
Anti-Corporate Farming Laws: State Specific Flowcharts
Iowa Anti-Corporate Farming Flowchart

Broadly speaking, Iowa law prohibits corporations and LLCs from owning or leasing farmland. However, there are broad exceptions for entities with related owners, smaller entities, and other types of operations or uses of farmland. The following flowchart provides an overview of some parts of the Iowa law.

If the farm is a corporation, are all the shareholders individuals?
If the farm is an LLC, are all the members individuals?

Restrictions on ownership or leasing of farmland may apply. Consult with an attorney for more information.

If the farm is an LLC, are the majority of members related?
If the farm is a corporation, are the majority of shareholders related and do they own a majority of the stock?

Does at least 60% of the entity’s gross revenue come from farming?

Are there 25 or fewer shareholders or members?

Is the corporation own or lease 1500 acres or less of farm land?

Does the corporation own or lease 1500 acres or less of farm land?

The corporation is considered a family farm corporation or the LLC is considered a family farm LLC and may own or lease land for farming, subject to any remaining restrictions.

The corporation may indirectly farm through the previous owner until the corporation sells the excess acreage and is considered an authorized corporation exempt from Iowa’s anti-corporate farming laws.

When the lease with the immediate prior owner ends, will the corporation sell the excess acres (beyond 1500) within 3 years?
Minnesota Anti-Corporate Farming Flowchart

Minnesota generally prohibits corporations and LLCs from engaging in farming and from owning or leasing farmland. Minnesota law exempts several types of entities and operations from this restriction including nonprofit organizations, some types of livestock operations, small entities, family owned entities, and those with owners engaged in farming, among other exceptions. The following is an overview of some parts of the Minnesota law.

Does the corporation or LLC own fewer than 40 acres of land and receive less than $150 per acre in gross revenue from farming and land rental annually?

- **NO**
  - Are the majority of the stockholders/members persons (or beneficiaries of)
    - **NO**
      - Does the entity have 5 or fewer shareholders?
        - **YES**
          - The entity is considered "de minimis," and may own or lease land for farming, subject to any remaining restrictions including
        - **NO**
          - Does this majority of related stockholders/members also hold a majority of the stock/interest?
            - **YES**
              - Is the farm an LLC?
                - **YES**
                  - Was the agricultural land owned by one or more of the related persons for 5 years before the
                - **NO**
                  - Does at least one of the related persons reside on or actively operate
                    - **YES**
                      - Are any of the stockholders/members corporations or LLCs?
                        - **NO**
                          - Do any revenues derived from rent, royalties, dividends, interest and annuities
                            - **YES**
                              - Is there only one class of members/shareholders?
                                - **NO**
                                  - Are all members/shareholders individuals (including estates or family
        - **YES**
          - BOX A
            Restrictions on farming activities, ownership or leasing of farmland may apply.
            - **NO**
              - Are any revenues derived from rent, royalties, dividends, interest and annuities
                - **YES**
                  - Is there only one class of members/shareholders?
                    - **NO**
                      - Are all members/shareholders individuals (including estates or family
                - **YES**
                  - Are any of the stockholders/members corporations or LLCs?
                    - **NO**
                      - Does any of the stockholders/members also hold a majority of the stock/interest?
                        - **YES**
                          - The entity is considered a family farm corporation or a family farm LLC, and may operate a farm, own or lease land for farming, subject to any remaining restrictions, including the requirement
If the entity owns or has an interest in agricultural land, is the total acreage 1,500 or less?

- **YES**
  - Does any shareholder or member that owns more than 51% of the entity live on or actively farm the land?
    - **YES**
      - Are any of the shareholders/members, in other authorized farm corporations or LLCs that own more than 1,500 acres?
        - **NO**
          - The entity is considered an authorized farm LLC or authorized farm corporation, and may operate a farm, own or lease land for farming, subject to any remaining restrictions, including

- **NO**

See Box A
North Dakota Anti-Corporate Farming Flowchart

North Dakota law prohibits corporations and LLCs from owning or leasing land for farming and ranching and from engaging in the business of farming or ranching. However, there are exceptions for small, family-based entities, among others. The flowchart below is an overview of certain exemptions for corporations and LLCs.

Are all of the shareholders or members individuals?

- **NO**
  - Are the non-individual shareholders or members either a trust for the benefit of an individual or an estate of a decedent?
  - **NO**
    - Restrictions on farming activities, ownership or leasing of farmland may apply.
  - **YES**
  - Are the total number of individual shareholders/members 15 or fewer (including beneficiaries of the trust or the estate added in)?
  - **YES**
  - Are all of the shareholders/members (or the trust for the benefit of an individual or an estate of a decedent) all related to each other?
  - **YES**
  - Does the corporation/LLC have 15 or fewer shareholders/members?
  - **YES**
  - Is each shareholder/member a citizen of the United States or a permanent resident alien of the United States?
  - **YES**
  - If a corporation, are all the officers and directors also shareholders who are actively engaged in operating the farm or ranch? If an LLC, are all the managers of the LLC members who are actively engaged in operating the farm or ranch?
  - **YES**

...
NORTH DAKOTA Anti-Corporate

YES

If a corporation, does at least one of the shareholders reside on or operate the farm or ranch? If an LLC, does at least one member reside on or operate the farm or ranch?

YES

Is at least 65% of the entity’s gross income derived from farming or ranching?

YES

Does 20% or less of the entity’s income come from nonfarm rent, royalties, dividends, interest and annuities?

YES

The entity is likely allowed to operate a farm, own or lease farmland, subject to any remaining restrictions under North Dakota law.
The South Dakota law prohibits corporations and LLCs from controlling agricultural land by owning or leasing it. The law provides exceptions for corporations that are small, engaged in farming, and family operated. The flowchart below explores some aspects of these exceptions to South Dakota’s law. It is unclear if South Dakota law applies to LLCs. Farmers considering forming an LLC should read the flowchart below as if they were forming a corporation. If the anti-corporate farming law might apply to the operation, a person forming an LLC should also seek counsel.

Is a majority of the voting stock held by members of a family (including an estate of a family member or a trust to benefit family members)?

- **NO**
  - Are there fewer than 10 shareholders?
    - **NO**
      - Restrictions on the ownership or control of agricultural land may apply. Consult with an attorney for more information.
    - **YES**
      - Are shareholders all natural persons or estates?
        - **NO**
          - Are shares all of one class?
            - **NO**
              - Are 20% or less of the gross receipts revenue from rent, royalties, dividends, interest, and annuities?
                - **NO**
                  - The entity is considered an authorized corporation and is allowed to control agricultural land, subject to any additional requirements including reporting obligations.
                - **YES**
                  - The entity is considered a family farm corporation and is allowed to control agricultural land, subject to any additional requirements including reporting obligations.
            - **YES**
              - The entity is considered a family farm corporation and is allowed to control agricultural land, subject to any additional requirements including reporting obligations.
        - **YES**
          - Is at least one of the stockholders a person who is residing on or actively operating the farm (or used to reside on or actively operate the farm)?
            - **NO**
              - Are none of the stockholders corporations?
                - **NO**
                  - The entity is considered a family farm corporation and is allowed to control agricultural land, subject to any additional requirements including reporting obligations.
                - **YES**
                  - The entity is considered a family farm corporation and is allowed to control agricultural land, subject to any additional requirements including reporting obligations.
            - **YES**
              - The entity is considered a family farm corporation and is allowed to control agricultural land, subject to any additional requirements including reporting obligations.
Oklahoma Anti-Corporate Farming Flowchart

Oklahoma law generally prohibits corporations and other entities from engaging in farming or ranching and from owning or leasing farmland. Oklahoma law has exceptions for small and family owned corporations and LLCs, among other exemptions. The flowchart below explores some aspects of these exceptions.

Are all the shareholders or members individuals (or trusts, estates, or corporations/LLCs that also may be allowed under this flowchart)?

- **NO**
  - Restrictions on farming and the ownership or leasing of farmland may apply. Consult with an attorney for more information.

- **YES**
  - Are there 10 or fewer un-related shareholders or members (there may be more than 10, so long as no more than 10 are unrelated)?
    - **NO**
    -  
    - **YES**
      - Does at least 65% of the LLC's annual gross receipts come from ranching or farming?
        - **NO**
        -  
        - **YES**
          - The corporation or LLC may be authorized to farm and to own or lease farmland, subject to remaining restrictions.
Kansas broadly prohibits corporations and LLCs from owning or leasing agricultural land in the states. However, there are exceptions for small entities, family-owned entities, and those engaged in farming, among other exceptions. The following flowchart provides an overview of some parts of Kansas law.

If the farm is a corporation, are all shareholders individuals? If the farm is an LLC, are all members individuals?

- NO
  - Are all non-individual shareholder/members family farm corporations and/or family farm limited liability agricultural companies?
    - NO
      - Restrictions on ownership or leasing of farmland may apply. Consult with an attorney for more information.
    - YES
      - Are shareholders all natural persons or estates?
        - NO
          - Restrictions on ownership or leasing of farmland may apply. Consult with an attorney for more information.
        - YES
          - Are shares all of one class?
            - NO
              - Restrictions on ownership or leasing of farmland may apply. Consult with an attorney for more information.
            - YES
              - The entity is considered an authorized farm corporation or a limited liability agricultural company and may own or lease land for farming, subject to any remaining restrictions.

- YES
  - Are a majority of the shareholders/members related and do they own a majority of the stock/percentage interest?
    - NO
      - The entity is considered a family farm limited liability ag company, or a family farm corporation and may own or lease land for farming, subject to any remaining restrictions.
    - YES
      - Does at least one shareholder/member live on, manage, or is otherwise actively engaged in the farm?
        - NO
          - The entity is considered a family farm limited liability ag company, or a family farm corporation and may own or lease land for farming, subject to any remaining restrictions.
        - YES
          - Restrictions on ownership or leasing of farmland may apply. Consult with an attorney for more information.
Wisconsin Anti-Corporate Farming Flowchart

Wisconsin law prohibits corporations from carrying on farming or owning land for farming, generally speaking. The law applies to livestock and row crop operations, primarily. It is unclear if Wisconsin law applies to LLCs. Farmers considering forming an LLC should read the flowchart below as if they were forming a corporation. If the anti-corporate farming law might apply to the operation, a person forming an LLC should also seek counsel.

Are all shareholders individuals (or estates)?

NO

Restrictions on ownership or leasing of farmland may apply. Consult with an attorney for more information.

Are there fewer than 15 non-related shareholders (which may be in addition to any related shareholders)?

NO

Are there 2 or fewer classes of shares?

YES

YES

The corporation may be limited from conducting farming operations or owning farmland relative to livestock, grain, and pasture operations.
Missouri Anti-Corporate Farming Flowchart

Generally speaking, Missouri law prohibits corporations from engaging in farming or owning farmland. Family owned and operated corporations are exempt, among other types of entities. It is unclear if Missouri law applies to LLCs. Farmers considering forming an LLC should read the flowchart below as if they were forming a corporation. If the anti-corporate farming law might apply to the operation, a person forming an LLC should also seek counsel.

Are all shareholders people, estates, or trusts?

NO

Are all corporate shareholders family farms or authorized farm corporations?

YES

Are at least half of the shareholders individuals who related and who own at least half of the voting stock?

YES

Restrictions on farming activities or ownership of farmland may apply. Consult with an attorney for more information.

NO

Does at least one shareholder live on or actively operate the farm, including exercising management control?

YES

The corporation is considered a family farm corporation and may engage in farming or own farmland, subject to additional restrictions such as reporting requirements.

NO

Does at least 2/3 of the corporation's total net income come from farming?

NO

The corporation is considered an authorized farm corporation and may engage in farming or own farmland, subject to additional restrictions such as reporting requirements.

YES
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